Supreme Court, U.S.
FILED

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No.

In The
Supreme Court of the United States
October 2000 Term

SHERYL L. HALL,

Petitioner,

v.

HILLARY RODHAM CLINTON, MARK LINDSAY, MARSHA SCOTT, LAURA TAYMAN, JOHN DOE, JANE DOE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Larry Klayman*
Paul J. Orfanedes
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 725
Washington, DC 20024
(202) 646-5172

Counsel for Petitioner

* Denotes Counsel of Record

QUESTIONS PRESENTED

1. Whether a writ of certiorari should issue to resolve an important question of federal law that has not been, but should be, settled by this Court regarding the legal status and lawful authority of the First Lady of the United States?

2. Whether a writ of certiorari should issue to resolve an important question of federal law that has not been, but should be, settled by this Court regarding whether the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U.S.C.) (hereinafter "CSRA") precludes civil rights claims brought by federal officers under 42 U.S.C. § 1985(1)?

3. Whether a writ of certiorari should issue to resolve an important question of federal law that has not been, but should be, settled by this Court regarding whether the CSRA precludes civil rights claims brought by federal officers under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) against persons who are not their supervisors and have no other lawful authority over them, but nonetheless violate their constitutional rights while acting under color of federal law?

LIST OF PARTIES

The following is a list of parties and each corporate party's respective parent corporation and subsidiaries, if any.

Petitioner:

1. Sheryl L. Hall

Respondents:

1. Hillary Rodham Clinton
2. Mark Lindsay
3. Marsha Scott
4. Laura Tayman
5. John Doe
6. Jane Doe

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OPINIONS BELOW

The decision of the U.S. District Court for the Eastern District of Virginia, Alexandria Division, (hereinafter "District Court") is unreported. *See* Appendix B at App. 12 - 18. The decision of the U.S. Court of Appeals for the Fourth Circuit (hereinafter "Appellate Court") is reported at 235 F.3d 202. *See* Appendix A at App. 1 - 11.

STATEMENT OF JURISDICTION

The District Court entered a final judgment against Petitioner Sheryl L. Hall (hereinafter "Hall") on December 3, 1999. Hall appealed to the Appellate Court, which affirmed the District Court's final judgment on December 19, 2000.

This petition for writ of certiorari is timely, as it is being filed within ninety (90) days of December 19, 2000, or by March 19, 2001.

If this petition for writ of certiorari is granted, the U.S. Supreme Court will have jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

42 U.S.C. § 1985:

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by . . . intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof . . . or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, or impede him in the discharge of his official duties;

* * *

in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his or her person or property, or deprived . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

United States Constitution, Amendment V:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . ..

STATEMENT OF THE CASE

A. Procedural History

Hall, a White House whistleblower, initiated this action, *pro se*, on May 17, 1999. In so doing, Hall invoked the District Court's "federal question" jurisdiction pursuant to 28 U.S.C. § 1331, among other relevant statutory provisions. Hall's *pro se* complaint attempted to state a variety of federal claims against numerous defendants, including First Lady Hillary Rodham Clinton.

On August 8, 1999, Hall, with the assistance of counsel, filed an amended complaint. Hall's amended complaint narrowed her claims to include only three counts. Count I asserted a claim against Mrs. Clinton, Marsha Scott, the former head of the White House Correspondence Office, and John and Jane Does Nos. 1-5 arising under 42 U.S.C. § 1985(1). Count II asserted a claim against Mark Lindsay, in his official capacity as Director of the Office of Administration of the Executive Office of the President, arising under 42 U.S.C. § 2000e-3. Count III asserted a claim against Scott and two (2) former employees of the White House Correspondence Office, Laura Tayman and Eric Vaden, arising under the Fifth Amendment to the U.S. Constitution.

On December 3, 1999, the District Court dismissed all of Hall's claims. With respect to Hall's claims arising under 42 U.S.C. § 1985(1) and the Fifth Amendment, the District Court found that these claims were preempted by CSRA, even though the defendants named in those claims had no supervisory or other lawful authority over her and even though Defendant Clinton was not even a federal employee.

The District Court also dismissed Hall's federal employment discrimination claim for failure to state a claim.

On December 19, 2000, the Appellate Court affirmed.

B. Statement of Facts

In October of 1992, Hall began working at The White House as Manager of the Customer Support Branch of the Information Systems and Technology Division of the Office of Administration in the Executive Office of the President. As such, Hall had substantial duties and responsibilities relating to The White House's computer systems, resource management and budget. At times, Hall was responsible for supervising as many as thirty-eight (38) persons.

In January of 1993, the President and Mrs. Clinton arrived at The White House. Upon her arrival, Mrs. Clinton directed that a new $1.7 million master database, known as the White House Office Database or "WhoDB," be developed to assist in a variety of functions, including campaign fundraising:

> [WhoDB] was not used for just official purposes; senior White House staff planned, and, in fact, used it to advance the campaign fundraising objectives of the Democratic National Committee [DNC]. This conversion of government property to the use of the DNC constitutes theft of government property under 18 U.S.C. § 641.
>
> * * *
>
> [P]ersons at the highest levels of the White House, including the First Lady, knew of, and approved the

> use of the White House Database for partisan political purposes, or the use of government personnel and resources to work on outside partisan political databases. Either scenario is simply unlawful, and represents a planned theft of government property for partisan political purposes.
>
> * * *
>
> [T]he Database was more than just a White House management tool – it required political loyalty and secrecy.

House Comm. on Government Reform and Oversight, *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Office Database, and Related Matters*, H.R. Rep. No. 105-828, 105th Cong., 2d Sess. 1, 47, 55 (1998).

At the direction of Mrs. Clinton, development of WhoDB was overseen by Scott, who at the time was head of the White House Correspondence Office and thus had no supervisory or other lawful authority over Hall. *Id.* at 49. Scott was assisted in the development of WhoDB by Vaden and Tayman, who also worked in the White House Correspondence Office and likewise had no supervisory or other lawful authority over Hall.

In November of 1993, Hall was assigned responsibility for developing software for WhoDB. During a meeting in November of 1993 concerning the development of WhoDB, Scott described to Hall the political nature of some of the information that Mrs. Clinton directed the new database to contain and the political functions that Mrs. Clinton directed

the new database to perform. When Hall expressed reservations about the legality of using U.S. government resources and personnel for such political activity, Scott instructed Hall to "use her imagination" to circumvent the law.

During a subsequent meeting in Scott's White House office, also in November of 1993, Hall told Scott directly that, due to its political nature, U.S. government resources and personnel could not lawfully be used to develop a database containing the information and performing the functions directed by Mrs. Clinton. Scott reacted angrily and ousted Hall from her office.

In the following months, Scott expressed "grave" concern about Hall to Mrs. Clinton's Chief of Staff Maggie Williams and Counsel to the President Bruce Lindsey. In a memorandum to Mrs. Clinton and Lindsey, Scott falsely characterized Hall as "old, less informed, unenthusiastic, disloyal to the President's Administration and an obstacle to the development of WhoDB." Tayman and Vaden also wrote a memorandum circulated by Scott to White House Deputy Chief of Staff Phil Lader that falsely characterized Hall as disloyal, incompetent and lacking in managerial skills. Hall's duties, responsibilities and staff were taken away from her, clearly as a result of objecting to the obviously illegality of WhoDB and clearly at the direction of Mrs. Clinton. Hall was given little or no work to perform, and her professional reputation was severally damaged. She also suffered substantial emotional distress, among other damages. She thus initiated this action against Mrs. Clinton, Scott, Tayman and Vaden, among others, to hold them accountable for the substantial injuries they had caused her and to obtain compensation for her damages.

REASONS FOR GRANTING THE WRIT

I. THIS MATTER PRESENTS AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT REGARDING THE LEGAL STATUS AND LAWFUL AUTHORITY OF THE FIRST LADY OF THE UNITED STATES

Without question, when she became First Lady, Mrs. Clinton usurped far-reaching powers never previously associated with that position. These powers extended not only to her role as the head of the President's Task Force on National Health Care Reform, to which she was formally appointed by executive order,[1] but also to a wide variety of

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[1] To Respondent's knowledge, the only judicial decisions addressing the legal status of the First Lady arose in the context of the President's health care task force. In *Association of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993), the U.S. Court of Appeals for the District of Columbia Circuit (hereinafter "D.C. Circuit") ruled that Mrs. Clinton was a *de facto* officer or employee of the United States for purposes of the Federal Advisory Committee Act, 5 U.S.C. App. 2, after being appointed being appointed by executive order to lead the task force. *Id.* at 911. Clearly, the unique circumstances presented by the President's executive order appointing his wife to lead the health care task force has no bearing on the legal status of the position of First Lady of the United States in this instance. In fact, in reaching its decision, the D.C. Circuit specifically "express[ed] no view as to [the First Lady's] status under any other statute. *Id.*

other matters, including personnel and policy matters. Among these are included, most famously, the White House Travel Office firings, WhoDB, the hiring of David Craig Livingstone, who unlawfully obtained and maintained hundreds of FBI background investigation files on former Reagan and Bush Administration appointees, employees and staffers, and even the firing of the White House kitchen staff. *See, e.g.*, "Chef-Gate," *The Wall Street Journal*, March 12, 2001 at 22A. As another White House whistleblower, Ms. Linda Tripp, testified, Mrs. Clinton "ruled the school." Deposition of Linda R. Tripp in *Alexander v. FBI*, 1:96-cv-2123/97-1288 (RCL) (D. District of Columbia Jan. 5, 1999) at 359. The White House staff regarded Mrs. Clinton and a her husband as "co-presidents" with equal authority. *Id.* ("she was every bit as presidential as he was, and we treated her that way"); *see also id.* at 872 ("she could effectively order things to happen without his permission").

In the instant case, Mrs. Clinton conspired with Scott and other, currently unknown persons to misuse U.S. government resources and personnel to further partisan political goals, then to retaliate against Hall for objecting to Mrs. Clinton's illegal scheme. This retaliation – which included the elimination of Hall's duties, responsibilities and staff – obviously injured Hall in her person and property on account of Hall's having lawfully discharged the duties of her office. It also was intended to hinder and impede Hall in the discharge of those duties, which included resource management and budgeting. Hall's Amended Complaint thus stated a clear and obvious claim for a violation of 42 U.S.C. § 1985(1).

However, the rulings of the District Court and the Appellant Court effectively put the First Lady beyond the

law. Both courts refused to hold Mrs. Clinton accountable under 42 U.S.C. § 1985(1), yet the remedy they declared supplants § 1985(1) – the CSRA – lets Mrs. Clinton completely off the hook because she is not an "employee" of the federal government or a supervisor as set forth in that statute. *See* 5 U.S.C. §§ 2104, 2105, 2302. Mrs. Clinton's legal status with respect to Hall's employment relationship with the U.S. government was no different from that of any other "ordinary" private citizen.

The raw power usurped by an ambitious First Lady such as Mrs. Clinton cannot remained unchecked. Checks, balances, and legal accountability provide the very foundation of our system of government. While Mrs. Clinton is no longer the First Lady of the United States, other highly ambitious and politically motivated persons will undoubtedly occupy this unique position. A petition for writ of certiorari must, respectfully, issue to address the legal status and lawful authority of the First Lady of the United States.

II. THIS MATTER PRESENTS AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT REGARDING WHETHER THE CSRA PRECLUDES CIVIL RIGHTS CLAIMS BROUGHT BY FEDERAL OFFICERS UNDER 42 U.S.C. § 1985(1)

In its ruling, the Appellate Court made the extraordinary finding that the CSRA "implicitly repealed all other then-existing statutory rights of federal employees regarding personnel decisions" including 42 U.S.C. § 1985(1). App. 9.

The effect of the Appellate Court's ruling is that third parties and other persons external to the relationship between a federal employee and the federal government – such as Mrs. Clinton – can intimidate, pressure, and even threaten an employee's supervisor into taking adverse personnel actions – such as removing the employee's duties, responsibilities, and staff – without fear of legal recourse. This is precisely what occurred in this instance, and this is precisely the result of the Appellate Court's ruling.[2] Mrs. Clinton, who is not a

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[2] In *Spagnola v. Mathis*, 809 F.2d 16 (D.C. Cir. 1987), the D.C. Circuit declared that it was precisely this type of external threat to federal authority and federal institutions that Reconstruction Era statutes such as 42 U.S.C. § 1985(1) were enacted to address:

> The nature of these provisions reveals an overarching congressional concern to protect the authority, institutions and processes of the Federal Government from *external*, usually coercive, disruption . . . The structure and origin of section 1985(1) reveal a grave congressional concern to protect the authority and institutions of the Federal Government from *outside* interference.

809 F.2d at 34 (Silberman, J., concurring) (italics original).

Legally, and logically, it makes no difference whether these external threats originate from Klan members committing acts of violence against federal officials in the Reconstruction Era South or an overly ambitious, present day First Lady – who has no formal legal status or lawful authority in the federal government – putting her political

federal employee and certainly had no lawful supervisory authority over Hall – she is the legal equivalent of a complete stranger to Hall – conspired with Scott to remove Hall's duties, responsibilities and staff after Hall, in the course of carrying out her official duties, objected to the illegality of WhoDB. Yet, under the Appellate Court's ruling, Hall would have no legal recourse against Mrs. Clinton under 42 U.S.C. § 1985(1).[3]

This cannot and must not be the law. Other appellate courts addressing the impact of the CSRA on 42 U.S.C. § 1985(1) have not gone nearly as far. In *Spagnola*, for example, the D.C. Circuit held only that the CSRA precludes federal employees from bringing § 1985(1) claims against their *employers*, which Mrs. Clinton clearly is not. *Spagnola*, 809 F.2d at 30. In *Windsor v. The Tennessean*, 719 F.2d 155 (6th Cir. 1983), by contrast, the U.S. Court of Appeals for the Sixth Circuit held that a federal employee stated a cause of action under §1985(1) against a group of defendants, one of whom was his supervisor in the federal government. In fact, this Court has urged lower courts to give the Reconstruction Era Civil Rights Acts, which includes 42 U.S.C. § 1985(1), "a sweep as broad as [their] language," *Griffin v. Breckenridge*, 403 U.S. 88, 97 (1971), and has even described the sweep of § 1985 as "enormous." *Id.* at 99-100. Not only must a writ of certiorari issue to resolve this important question of federal law, but the Appellate Court's ruling is

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interests ahead of the law and retaliating against whistleblowers who stand in the way.

[3] The statute provides that a claim may be asserted against "any one or more of the co-conspirators." 42 U.S.C. § 1985.

thus in conflict with the rulings of other appellate courts as well as with this Court's ruling in *Griffin*.

III. THIS MATTER PRESENTS AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT REGARDING WHETHER THE CSRA PRECLUDES CIVIL RIGHTS CLAIMS BROUGHT BY FEDERAL OFFICERS UNDER *BIVENS* AGAINST PERSONS WHO ARE NOT THEIR SUPERVISORS AND HAVE NO OTHER LAWFUL AUTHORITY OVER THEM, BUT NONETHELESS VIOLATE THEIR CONSTITUTIONAL RIGHTS WHILE ACTING UNDER COLOR OF FEDERAL LAW

In *Bush v. Lucas*, 462 U.S. 367 (1983), this Court held that the CSRA precluded federal employees from bringing *Bivens* actions against supervisors who violate their constitutional rights. However, the Court did *not* decide the issue of whether the CSRA precluded federal employees from bringing *Bivens* actions against other, *non-supervisory employees* who violate their constitutional rights.

In this particular instance, Hall was disparaged by Scott, Tayman, and Vaden, none of whom had any supervisory or other lawful authority over Hall. In fact, Scott, Tayman and Vaden all worked in the White House Correspondence Office, a separate and distinct office within The White House far removed, both physically and organizationally, from the office in which Hall worked.

Nonetheless, Scott prepared and circulated a memorandum to Mrs. Clinton and presidential aide Bruce Lindsey falsely characterizing Hall as "old, less informed, unenthusiastic, disloyal to the President's Administration and an obstacle to the development of WhoDB." Tayman and Vaden also wrote a memorandum circulated by Scott to White House Deputy Chief of Staff Phil Lader falsely characterizing Hall as disloyal, incompetent and lacking in managerial skills. Both memorandum disparaged Hall's good name, professional reputation, honor and integrity, and deprived Hall of her liberty interests therein. *See Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); *see also Board of Regents v. Roth*, 408 U.S. 564, 573 (1972). However, in neither instance was Hall afforded minimal due process protections afforded by the Fifth Amendment.

The circulation of these false and disparaging memoranda do not constitute a "personnel action" as that term is defined by the CSRA. 5 U.S.C. § 2302(a)(2)(A)(i) - (xi). Neither Scott, Tayman, nor Vaden even had authority to take, direct others to take, recommend, or approve any "personnel action" with respect to Hall. 5 U.S.C. § 2302(b). The CSRA simply does not address instances such as this where one federal employee's constitutional rights are violated by another in the manner that Scott, Tayman and Vaden violated Hall's Fifth Amendment rights.

The legal rights of federal employees obviously raise important issues of federal law, as this Court recognized when it granted certiorari in other cases involving the legal relationship between federal employees and the federal government. *See, e.g., Bush, supra*; *United States v. Fausto*, 484 U.S. 439 (1988). The legal relationships governing the interaction among federal employees are no less important

than the legal relationships governing federal employees, their supervisors and personnel actions. A petition for writ of certiorari should issue to address this obviously important issue.

CONCLUSION

For the foregoing reasons, Hall respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

Larry Klayman*
Paul J. Orfanedes
JUDICIAL WATCH, INC.
501 School Street, S.W.
Suite 725
Washington, DC 20024
(202) 646-5172

Counsel for Petitioner

* Denotes Counsel of Record

APPENDIX A - DECEMBER 19, 2000
APPELLATE COURT OPINION

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SHERYL L. HALL,	)	
	)	
Plaintiff-Appellant,	)	
	)	
and	)	
	)	
Donald R. Hall,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99-2665
	)	
HILLARY RODHAM CLINTON; MARK LINDSAY; MARSHA SCOTT; LAURA TAYMAN; JOHN DOE; JANE DOE,	)	
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
DEMOCRATIC NAT'L COMMITTEE; OFFICERS, AGENTS, EMPLOYEES; FRANKLIN REEDER; JODIE TORKELSON; ADA	)	

POSEY; CHARLES)
BENJAMIN; CRAIG)
SMITH; ERIC VADEN;)
MAGGIE WILLIAMS;)
JOSEPH ANDREW,)
)
Defendants.)
)

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Albert V. Bryan, Jr., Senior District Judge.
(CA-99-694-A)

Argued: November 2, 2000

Decided December 19, 2000

Before: WILKINSON, Chief Judge, and WILKINS and MOTZ, Circuit Judges.

Affirmed by published opinion. Judge Wilkins wrote the opinion, in which Chief Judge Wilkinson and Judge Motz joined.

COUNSEL

ARGUED: Paul J. Orfanedes, Klayman & Associates, P.C., Washington, D.C., for Appellant, Michael Scott Raab, Appellant Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C. for Appellees. **ON BRIEF:** Larry Klayman, Klayman & Associates, P.C., Washington, D.C., for Appellant. David W. Ogden, Acting Assistant Attorney General, Helen F. Fahey,

United States Attorney, Mark B. Stern, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees.

OPINION

WILKINS, Circuit Judge:

Sheryl L. Hall appeals a district court order dismissing her claims under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and 42 U.S.C. § 1985(1) (West 1994), as being precluded by the Civil Service Reform Act (CSRA) of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U.S.C.A.). Because the CSRA constitutes the exclusive remedy for claims arising out of federal employment, we affirm.

I.

Hall alleged the following facts in her amended complaint. On October 25, 1992, Hall began employment as a manager in the Executive Office of the President ("EOP"). In the time she worked for the EOP, she received numerous awards and high performance ratings. In November 1993, Hall was responsible for developing software for what became known as the "White House Office Database" ("WhoDB"). Development of the WhoDB was overseen by Director of White House Correspondence Marsha Scott and by First Lady Hillary Rodham Clinton. Scott was assisted by two employees of the White House Correspondence Office, Eric Vaden and Laura Tayman. In November 1993, Hall and Scott met regarding the WhoDB. When Scott described the political nature of some of the information that Clinton

intended to include in the WhoDB, Hall expressed concern regarding the legality of doing so. In response. Scott instructed Hall to do her best to circumvent the applicable legal restrictions. In a subsequent meeting, also in November 1993, Hall informed Scott that she had concluded that using WhoDB as described by Scott would indeed be illegal. Scott responded angrily by "oust[ing]" Hall from Scott's Office. J.A. 27.

In January 1994, Scott transmitted a memorandum to Clinton and Bruce Lindsey, and advisor to the President who was employed in the White House Counsel's Office. In the memo, she stated that Clinton and the President wanted WhoDB completed, and she falsely characterized Hall as "old, less informed, unenthusiastic, disloyal to the President's administration, and an obstacle to the development of the WhoDB." *Id.* at 27-28 (amended complaint) (internal quotation marks omitted).

Beginning in January 1994, ten employees were removed from Hall's supervision and she was relieved of her responsibilities concerning WhoDB. Taymen and Vaden transmitted a memorandum to Scott in March 1994 falsely characterizing Hall as "disloyal, incompetent, and lacking in management skills." *Id.* at 28. Hall received no prior notification regarding this memo and no reasonable opportunity to defend herself against the allegations therein. Scott, in turn, transmitted the memo to White House Deputy Chief of Staff Phil Lader and to Clinton. Neither Clinton, Scott, Taymen, nor Vaden supervised Hall or had any authority over her. Hall's responsibilities continued to be reduced in subsequent months, and in November 1996, her position was eliminated and her responsibilities were assigned

to a less qualified employee for whom she was assigned to work.

Hall subsequently initiated this suit, alleging two causes of action that are relevant here: (1) that by transmitting the false memoranda disparaging her, Scott, Tayman, and Vaden, acting under color of law, violated Hall's liberty interest in her reputation without affording her the due process of law required by the Fifth Amendment to the United States Constitution; and (2) that Scott, Clinton, and other unnamed officials violated 42 U.S.C. § 1985(1) by agreeing to impede Hall by intimidation or threat from lawfully discharging her duties or to injure Hall in her person or property because of the lawful discharge of her duties.

The defendants moved to dismiss Hall's complaint for lack of subject matter jurisdiction and for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(1), (6). The district court granted the motion, determining that it lacked subject matter jurisdiction over the claims because they were precluded by the CSRA. The court alternatively determined that the complaint failed to state a Fifth Amendment *Bivens* claim because Hall did not have a vested liberty interest in her employment with the EOP and failed to state a 42 U.S.C. § 1985(1) claim because it did not allege class-based discrimination.

II.

Hall maintains that the district court erred in dismissing her Fifth Amendment *Bivens* claim against Scott, Tayman, and Vaden as being precluded by the CSRA. We disagree.

A *Bivens* action is a judicially created damages remedy designed to vindicate violations of constitutional rights by federal actors. *See Bivens*, 403 U.S. at 395-97. In order for a *Bivens* remedy to be available, a court must determine that (1) Congress has not already provided an exclusive remedy; (2) there are no "special factors counseling hesitation in the absence of affirmative action by Congress"; and (3) there is no "explicit congressional declaration" that money damages not be awarded. *Id.* at 396-97; *see Schwicker v. Chilicky*, 487 U.S. 412, 423 (1988). The "special factors" concept "include[s] an appropriate judicial deference to indications that congressional inaction has not been inadvertent." *Schwicker*, 487 U.S. at 423.

The CSRA "comprehensively overhauled the civil service system," creating a "framework for evaluating adverse personnel actions against [federal employees]." *Lindhal v. Office of Pers. Mgmt.*, 470 U.S. 768, 773-74 (1985). "It prescribes in great detail the protections and remedies applicable to such action, including the availability of administrative and judicial review." *United States v. Fausto*, 484 U.S. 439, 443 (1988). A primary purpose of enacting the CSRA was "to replace the haphazard arrangements for administrative and judicial review of personnel actions" that existed prior to the CSRA. *Id.* at 444. When the CSRA was enacted, the perception was that the existing appeals process was so lengthy and complicated that federal supervisors were discouraged from taking legitimate adverse personnel actions.

See id. at 445. Further, because multiple jurisdictions had concurrent jurisdiction over actions challenging personnel decisions, there was a wide variation in decisions regarding the same or similar matters. *See id.* Accordingly, the CSRA was designed to eliminate this problem as well. *See id.*

The Supreme Court examined the availability of a *Bivens* action in a federal employment context in *Bush v. Lucas*, 462 U.S. 367 (1983). In *Bush*, the Supreme Court determined that federal employment constituted a "special factor" warranting refusal to recognize a First Amendment *Bivens* claim asserted by a federal employee. *See Bush*, 462 U.S. at 378-80; *Zimbelman v. Savage*, 228 F.3d 367, 370 (4th Cir. 2000). This court recently decided a similar case, the facts of which are closely analogous to the case at bar. In *Zimbelman*, two employees were fired from their jobs with the Air Force under suspicion of having committed various acts of misconduct, including theft and fraud. *See Zimbelman*, 228 F.3d at 369. The employees brought suit against the supervisors and the Air Force investigators who had conducted the investigation into their misconduct, asserting several constitutional claims, including one under *Bivens* for a violation of their Fifth Amendment right to preserve their reputations. *See id.* at 370. This court affirmed the dismissal of the *Bivens* claim, concluding that they "indisputably ar[o]se from a federal employment relationship." *Id.*

Hall contends that the CSRA does not preclude her *Bivens* action because although the CSRA provides for administrative or judicial review of the action taken against her, her *Bivens* claim is not against her supervisor. Hall's argument is without merit, however. The salient fact here is that the wrongful acts Hall alleges were taken against her arose out of her federal employment relationship. Because

they did arise out of her federal employment, *Bush* and *Zimbelman* dictate that Hall's claim is precluded. That the CSRA does not provide the remedy that she would prefer is of no moment. *See Bush*, 462 U.S. at 388-90 (refusing to allow a *Bivens* action even though "existing remedies [did] not provide complete relief"); *Zimbelman*, 228 F.3d at 370-71 (holding that plaintiffs were not released from the exclusive remedial framework of the CSRA when their claims arose from the federal employment even though the CSRA provided plaintiffs with no remedy); *cf. Lombardi v. Small Bus. Admin.*, 889 F.2d 959, 961 (10th Cir. 1989) (holding that plaintiff's claims were precluded by the CSRA because actions complained of arose from federal employment relationship even though many of the alleged violations occurred after the employment relationship was terminated); *Gleason v. Malcom*, 718 F.2d 1044, 1048 (11th Cir. 1983) (per curiam) (holding that claims by federal employees were barred under *Bush* even though one claim was against coworkers because "[t]he purpose of denying a private cause of action to federal employees is to ensure that they do not bypass comprehensive and carefully balanced statutory and administrative remedies in order to seek direct judicial relief"). Accordingly, the district court correctly dismissed Hall's *Bivens* claim.[1]

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[1] Because we affirm the dismissal of this claim on this ground, we do not address Hall's arguments concerning the alternative basis given by the district court for the dismissal of the claim.

III.

Hall next argues that, even assuming that the special factor of federal employment mandates dismissal of her *Bivens* claim, that factor does not counsel dismissal of her § 1985(1) claim. We disagree.

Hall correctly maintains that *Bush* is not controlling with regard to her § 1985(1) claim because *Bush* "dealt only with the effect of the CSRA on the judicial implication of *constitutional* remedies, not with the foreclosure of statutory claims." *Spagnola v. Mathis*, 809 F.2d 16, 30 (D.C. Cir. 1986), *reh'g en banc granted in part*, 859 F.2d 223 (D.C. Cir. 1988); *see United States v. Lund*, 853 F.2d 242, 248 (4th Cir. 1988) (explaining that "cases holding that the comprehensive nature of the remedies available to federal employees under the CSRA preclude certain judicially-implied remedies for the personnel practices the CSRA prohibits" are "completely inapposite" to question of implicit repeal of express provision of a statute). Nevertheless, we hold that Congress intended that the CSRA would operate to the exclusion of all other statutory remedies for claims arising out of the federal employment relationship. Because "Congress clearly intended the CSRA to be the exclusive remedy for federal employees," the comprehensive grievance procedures of the CSRA implicitly repealed all other then-existing statutory rights of federal employees regarding personnel decisions.[2]

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[2] In any event, we note that the CSRA appears to provide a remedy for all of the actions on which Hall premised her § 1985(1) claim. *See* 5 U.S.C.A. § 2301(b)(2) (West 1996) (stating that federal employees "should receive fair and equitable treatment in all aspects of personnel management");

Pinar v. Dole, 747 F.2d 899, 913 (4th Cir. 1984); *see Petrini v. Howard*, 918 F.2d 1482, 1484-85 (10th Cir. 1990) (per curiam) (explaining that the CSRA preempted state law challenges to federal personnel decisions because the CSRA "was intended to provide the exclusive procedure for challenging" such decision); *Spagnola*, 809 F.2d at 30 (holding that federal employee was precluded from bringing § 1985(1) claim because "the CSRA is the exclusive remedy for aggrieved federal employees advancing nonconstitutional claims").

Hall maintains that her claim should not be precluded because neither Scott nor Clinton were her supervisors and because Clinton was not a federal employee. Even if this is true, however, someone with authority to do so made the personnel decision of which Hall complains, regardless of whether the decisions were influenced by someone without such authority. Allowing a federal employee to sue those people who may have influenced a supervisor's decision to take a certain personnel action"would create an obstacle to the attainment of Congress's goal of unifying challenges to

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5 U.S.C. A. § 2302(b)(3) (West 1996) (prohibiting "reprisals for the refusal . . . to engage . . . in political activity"); 5 U.S.C.A. § 2302(b)(8)(A)(i) (West 1996) (prohibiting reprisal for the "disclosure of information . . . which the employee . . . reasonably believes evidences" the "violation of any law, rule, or regulation"); 5 U.S.C.A. § 2302(b)(9)(D) (West 1996) (prohibiting reprisal for "refusing to obey an order that would require an individual to violate a law"); *Fausto*, 484 U.S. at 446 (describing 5 U.S.C.A. § 2302 as prohibiting "unlawful discrimination, coercion of political activity, nepotism, and reprisal against so-called whistleblowers").

federal personnel decisions in a single administrative forum." *Broughton v. Courtney*, 861 F.2d 639, 641 (11th Cir. 1988). Furthermore, knowledge by a supervisor that making a particular personnel decision may give rise to a lawsuit against those who may have influence over him would no doubt discourage some supervisors from taking legitimate personnel actions. *Cf. Fausto*, 484 U.S. at 445; *Bush*, 462 U.S. at 389. For all of these reasons, the district court correctly determined that Hall's 1985(1) claim is precluded by the CSRA.[3]

IV.

In sum, the district court correctly dismissed Hall's Fifth Amendment *Bivens* and 42 U.S.C.A. § 1985(1) claims for lack of subject matter jurisdiction because they are barred by the CSRA.

AFFIRMED

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[3] Because we affirm the dismissal of Hall's § 1985(1) claim on this basis, we do not address her arguments concerning the alternative basis given by the district court for dismissing the claim.

APPENDIX B - DECEMBER 3, 1999
DISTRICT COURT ORDER

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SHERLY L. HALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 99-694-A
	)	
HILLARY RODHAM CLINTON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This case comes before the court on defendants' (Hillary Rodham Clinton, Marsha Scott, Laura Tayman, Mark Lindsay, Jane Doe, and John Doe) motion to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Based on the parties' submissions, and for the reasons stated herein, it is hereby

ORDERED that:

1. The motion to dismiss is GRANTED with respect to defendants Hillary Rodham Clinton, Marsha Scott, Laura Tayman, Mark Lindsay, Jane Doe, and John Doe.

2. The case is therefore DISMISSED with prejudice with respect to defendants Hillary Rodham Clinton, Marsha Scott, Laura Tayman, Mark Lindsay, Jane Doe, and John Doe.

Background

Beginning on October 25, 1992, plaintiff Sheryl Hall was employed as the manager of the Customer Support Branch with the Information Systems and Technology Division ("ISTD") of the Office of Administration ("OA") of the Executive Office of the President ("EOP"). According to the amended complaint, in November of 1993, Hall had responsibility for development of software for what is presently known as the White House Office Database ("WhoDB"), a master database designed to have standard functions which could be utilized for a variety of purposes by various White House offices. Development of WhoDB was allegedly overseen by Marsha Scott, Director of the White House Correspondence Office, upon the direction and with the approval of Hillary Clinton.

In November of 1993, Hall met with Scott regarding WhoDB. When Scott described the political nature of some of the information which Clinton desired to be included in the WhoDB and the political functions that Clinton desired the software to perform, Hall expressed reservations about the legality, under the Hatch Act, of the utilization of United States government employees and resources for what appeared to be political activity. Scott allegedly responded by replying that Hall should use her imagination to circumvent the legal restrictions imposed by the Hatch Act. In a subsequent meeting regarding the same topic, Hall alleges that Scott reacted angrily and ousted Hall from Scott's office.

In various memoranda transmitted by Scott over the next several months in relation to the status of the WhoDB, Scott allegedly characterized Hall as a gate keeper, old, less informed, unenthusiastic,, disloyal to the President's administration, and an obstacle to the development of the WhoDB. Hall alleges that these characterizations were untrue, as evidenced by her long and distinguished career as a federal civil servant, and made without prior notification to Hall or the reasonable opportunity for Hall to defend herself. In January of 1994, Hall alleges that ten of her staff began being removed from her supervision and that she was relieved from responsibility related to the development of the WhoDB, thereby significantly decreasing her duties. In March of 1994, Hall alleges that Laura Tayman (employed in the White House Correspondence Office under Scott's supervision) and Eric Vaden (employed in the White House Correspondence Office under Scott's supervision) transmitted a memorandum to Scott characterizing Hall as disloyal, incompetent, and lacking in management skills. This memorandum was allegedly transmitted to Phil Lader, White House Deputy Chief of Staff, and Clinton.

In subsequent months, Hall alleges that her responsibilities continued to be reduced and that she found herself increasingly idle and excluded from tasks and projects in which she had previously been engaged and which she had been employed to perform. Hall alleged that she further became subjected to a hostile, intimidating, and abusive work environment due to the conduct of her supervisor, Chuck Benjamin. In September and October of 1996, Hall allegedly opposed what she believed to be an unlawful and discriminatory employment practice by twice complaining to the OA Human Resources Manager of being ordered by her supervisor, Banjamin (sic), to lower her performance

appraisal of a an (sic) African-American male working under her supervision. In November of 1996, Hall's position was allegedly eliminated and renamed, her duties and supervisory responsibilities were assigned to a lesser qualified male, and she was assigned to work under this lesser qualified male.

Hall alleges that the previous actions were undertaken with the intention and for the purpose of forcing Hall's resignation. On December 19, 1996, Hall states that she filed an informal equal employment opportunity ("EEO") complaint against Benjamin alleging gender discrimination. On January 15, 1997, Hall filed a subsequent EEO complaint against Benjamin. On February 7, 1997, Hall alleges that Benjamin provided Hall with her performance appraisal for the period ending in June of 1996. This appraisal allegedly lowered Hall's performance rating for the first time since she had been employed by the OA and contained false, misleading and unjustified negative narrative comments by Benjamin. It is undisputed that Hall's February 7, 1997 performance appraisal rated her as "exceed fully successful" which is the second highest possible rating.

On October 30, 1998, the United States House of Representatives Committee on Government Reform and Oversight publicly disseminated the Fifth Report entitled *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Office Data Base, and Related Matters*. In this report, the Oversight Committee found that senior White House staff used WhoDB to advance the campaign fund raising objectives of the Democratic National Convention (sic) and that this conversion of government property constituted theft of government property under 18 U.S.C. § 641.

In count one under 42 U.S.C. § 1985(1), Hall alleges that defendants Clinton, Scott, and other unknown people unlawfully agreed to hinder or impede Hall by intimidation or threat in the lawful discharge of her duties and to injure Hall in her person or property on account of the lawful discharge of her duties. In count two under 42 U.S.C. § 2000e-3, Hall alleges that the adverse action taken against her by Benjamin was in retaliation for her previous EEO complaints. In count three under the Fifth Amendment to the United States Constitution, Hall alleges that the derogatory and degrading charges made about Hall by White House employees deprived her of the right to liberty without due process of law and damaged her liberty interest in her good name, professional reputation, honor, and integrity.

Discussion

Defendants argue that the court lacks subject matter jurisdiction over counts one and three because the Civil Service Reform Act ("CSRA") bars plaintiff's claims. The CSRA was enacted to replace the haphazard arrangements for administrative and judicial review of personnel actions and provides federal employees with a number of substantive and procedural rights. Defendants assert that plaintiff's claims are employment-related and fit within the CSRA's broad remedial scope. Plaintiff responds and argues that the CSRA unmistakably provides that its proscriptions regarding prohibited personnel actions apply only to certain individuals that have the "authority to take, direct others to take, recommend or approve any personnel action . . ." 5 U.S.C. § 2301(b)(ii). Plaintiff asserts that defendants were not her supervisors and did not have this type of authority.

The court finds that the actions of the defendants are clearly employment-related and are encompassed under the remedial scope of the CSRA. As plaintiff contends in her amended complaint and admits in her brief, defendants had the raw power and influence to cause and adverse action. Plaintiff also admits that the development of WhoDB was overseen by Scott upon the direction and with the approval of Clinton and that plaintiff was responsible for the development of software for WhoDB. Plaintiff's argument that the defendants were not in a supervisory position is disingenuous. If they did not have the authority to take, direct others to take, or recommend or approve any personnel action, then plaintiff would fail to state a claim upon which relief can be granted. Therefore the CSRA applies to these parties and provides the sole remedy for plaintiff's Fifth Amendment and § 1985(1) claims. See Bush v. Lucas, 462 U.S. 367 (1983); Jones v. Tennessee Valley Authority, 948 F.2d 258 (6th Cir. 1991).

In addition, the court sustains the motion to dismiss for counts one and three under Fed. R. Civ. P. 12(b)(6). Although there is some disagreement among the courts, a § 1985(1) claim must be supported by class-based discrimination. None is alleged here. With respect to plaintiff's Fifth Amendment claim, plaintiff does not have a vested liberty interest in her job. In addition, Plaintiff's alleged injury is deminimus (sic) because she did not suffer any adverse employment action.

With regards to count two for retaliatory discrimination, the court finds that the lower performance evaluation of "exceed fully successful" does not constitute an adverse employment action. Even if an adverse action were found, the act of retaliation was allegedly taken by Chuck Benjamin

(not a party to this case). The court can find no basis to impute his liability to the moving defendants.

Conclusion

For these reasons, the court grants the motion to dismiss and dismisses the case with prejudice with respect to defendants Hillary Rodham Clinton, Marsha Scott, Laura Tayman, Mark Lindsay, Jane Doe and John Doe.

/s/

Albert V. Bryan, Jr.
United States District Judge

Alexandria, Virginia
December 3rd 1999